90-1664

FILED
MAY 23 1991
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No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1990

RONALD PHILBROOK,
Petitioner,

v.

ANSONIA BOARD OF EDUCATION AND NICHOLAS COLLICELLI, DR. CHARLES J. CONNORS, KENNETH EATON, WILLIAM EVANS, DEL MATRICARIA, SUSAN SCHUMACHER, FAITH TINGLEY, AND ROBERT E. ZURAW,
Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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On the Brief:
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13p.

QUESTION PRESENTED

Whether the court of appeals erred in affirming the finding that the leave provisions at issue were a limited purpose leave not administered to provide leave for all purposes except religious ones?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Ronald Philbrook and the respondents Ansonia Board of Education, Nicholas Collicelli, Dr. Charles J. Connors, Kenneth Eaton, William Evans, Del Matricaria, Susan Schumacher, Faith Tingley, and Robert E. Zuraw. Appellees in the court below also included Ansonia Federation of Teachers, Local 1012, AFL-CIO; Jose Neves; Kathleen Roberts; Mary Ghirardini; Dennis Gleason; Dominick Brogolia; Maureen Wilkinson; and Georgette Williams.

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STATEMENT OF THE CASE

Petitioner, Ronald Philbrook, is a teacher employed by the respondent, Ansonia Board of Education. Under the terms of relevant collective bargaining agreements, he has been provided three days of paid leave for religious observance. Philbrook and other teachers employed by the Board of Education also are provided paid leave for other reasons specified in the collective bargaining agreement which may or may not be religious in nature depending upon the personal beliefs of the teacher utilizing the leave. The Board of Education has provided Philbrook unpaid leave for whatever additional days he needs for

religious observance beyond the three days of paid leave provided under the bargaining agreements.

The relevant collective bargaining agreements have provided three days of paid "necessary personal business" leave in addition to the paid leave provided for specified reasons such as religious observance. Petitioner's Appendix (P.A.) at 29a-31a. Under the bargaining agreements, such leave may not be used for any reason for which leave is otherwise provided. Ibid. Philbrook sought to utilize such leave for religious observance but his request was denied under the terms of the agreements.

In Ansonia Board of Education v. Philbrook, 479 U.S. 60 (1986), this Court determined that the Board of Education's practice of providing "unpaid leave for holy day observance that exceeded the amount allowed by the collective bargaining agreement, would generally be a reasonable one." 479 U.S. at 70. This Court observed, however, that "unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious ones." 479 U.S. at 71 (emphasis in original). Consequently, the case was remanded to the district court to determine whether the "necessary personal business" leave category of the bargaining agreements provided for a "limited purpose leave" or whether that category of leave

constitutes "an open-ended leave provision that may be used for a wide range of secular purposes in addition to those specifically provided for in the contract, but not for similar religious purposes." Ibid.

On remand, the district court issued findings of fact in support of the conclusion that the "necessary personal business" leave provisions of the relevant agreements have been and continue to be administered as written so that teachers are not allowed to use such leave for any reason for which leave is otherwise provided in the agreements. P.A. at 31a. The district court concluded that the school board reasonably accommodated Philbrook's religious beliefs by providing both

paid and unpaid leave. P.A. at 32a, 33a. The decision of the district court was affirmed by the court of appeals.

REASONS FOR DENYING THE WRIT

The court of appeal's affirmation of the finding of a reasonable accommodation presents neither an important question of law nor an issue over which appellate courts are divided.

Philbrook claims that the denial of his request to use "necessary personal business" leave for religious observance is discriminatory because the denial is based upon the religious nature of the request. However, the language of the relevant agreements makes clear that the denial is based

upon the fact that paid leave is otherwise provided for religious observance. More importantly, on remand, Philbrook produced no evidence to show that "necessary personal business" leave is administered so as to allow such leave for reasons for which leave is otherwise provided in the agreements, or that such leave is not restricted to reasons which require a teacher's absence but is allowed for "a wide range of secular purposes in addition to those specifically provided for in the contract, but not for similar religious purposes." 479 U.S. at 71.

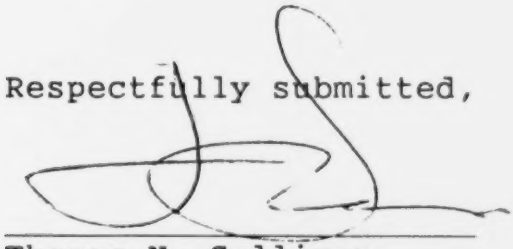
On remand, the district court made two factual findings of significance:

first, the necessary personal business leave has been a "limited purpose leave," and, second, this leave has not been administered so as to provide paid leave for all purposes except religious ones. P.A. at 31a. The court of appeal's affirmation of these findings presents neither an important question of law nor an issue over which appellate courts are divided. See Rule 10.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,



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